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Ex Parte

September 25, 2003

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: In the Matter of Federal-State Joint Board on Universal Service,
CC Docket No. 96-45

Dear Ms. Dortch:

Yesterday, John Morabito and I, representing Qwest, met with Jennifer Manner, Senior Counsel to Commissioner Kathleen Abernathy, and I, alone, met with Jason Williams, Special Assistant to Commissioner Kevin Martin. The purpose of the discussion was to discuss the Tenth Circuit remand¹ of the high cost universal service support program for non-rural carriers. The attached documents were used during the discussion.

Pursuant to FCC Rule 47 C.F.R. § 1.49(f), this *Ex Parte* is being filed electronically via the Electronic Comment Filing System for inclusion in the public record of the above referenced docket pursuant to FCC Rule 47 C.F.R. § 1.1206(b)(2).

Sincerely,

/s/ John W. Kure

cc: Jennifer Manner (via e-mail at jennifer.manner@fcc.gov)
Jason Williams (via e-mail at jason.williams@fcc.gov)

Attachments

¹ Qwest Corp. v. FCC, 258 F.3d 1191 (10th Cir. 2001)

Complying with the Tenth Circuit's Remand

The Joint Board's Recommended Order Ignores the Tenth Circuit's Mandates

Tenth Circuit Remand Decision

In part the Tenth Circuit remanded the FCC's Ninth Report and Order due to its failure to:

1. Define the terms "reasonably comparable" and "sufficient";
2. Justify sufficiently the funding benchmark at 135%;
3. Provide inducements for states to implement universal services

Joint Board's Recommended Decision

The recommendation to essentially re-adopt the Order remanded by the Tenth Circuit unlawfully maintains the status quo

1. The Joint Board failed to demonstrate the comparability of rural and urban rates

✓ Joint Board did not even define reasonably comparable

✓ Inappropriately relied upon data from the GAO report in trying to show that rates are reasonably comparable today

Use of national averages for rural, suburban and urban rates is very misleading. For example, WY has \$35 rate after universal support in the highest cost zone while NM has as \$14 statewide rates (recently changed).

✓ Joint Board continues to rely on implicit subsidies which are disappearing with competition

2. The Joint Board inappropriately continues to recommend a 135% benchmark

✓ The declaration of Aniruddha Banerjee, Ph.D. concludes that neither of the statistical methods relied upon by the Joint Board provide a basis for its findings

✓ His cluster analysis suggests the benchmark should be in the 107-117 percent range

3. The Joint Board failed to provide sufficient inducements to states

- ✓ Not clear how the expanded certification process would work
- ✓ Only give funding to a few states
- ✓ The lack of federal support for the remaining states provides no incentives for states to take action
- ✓ The Commission is required to develop mechanisms to induce adequate state action

Satisfying the Court's Mandate

Qwest proposed a two-tiered mechanism that will help the Commission define "reasonably comparable," justify the benchmark, and create state inducements while removing implicit subsidies.

At a minimum the Commission must create an inducement by increasing the number of states eligible for federal funding by either

- Creating an urban benchmark
- Lowering the 135% trigger

Conclusion

The Commission must resolve the Court's issues, not simply more fully explain

Qwest's Two-Tiered Proposal for the Federal Universal Service Funding Mechanism for Non-Rural Carriers

Qwest's two-tier USF methodology

- Tier 1 provides federal support to the costliest wire centers, irrespective of state boundaries. This results in federal support to the vast majority of states and enables the required inducement for state action.
- Tier 2 provides supplemental support to states that cannot themselves ensure reasonably comparable rates, even with Tier 1 funding.

Tier 1 Support

Using the Synthesis Model, support is provided to a wire center to the extent its average total monthly cost exceeds a benchmark, somewhere between one and a half and three times the national average.

- If the cost benchmark were set at 3 times the national average, almost all jurisdictions receive support (excluding NJ, RI and DC)
- This approach would give most states, rather than a mere handful, the required incentives to meet the appropriate conditions for the receipt of these funds.

Tier 2 Support

Tier 2 makes supplemental funds available to states with unusually high statewide average costs.

- If a state's average total monthly costs exceeds 1.5 of the average urban cost, again determined by the Synthesis Model, then the state would receive federal support.
- This involves defining rural and urban, defined by population density, which is correlated with lines per square mile.
- Qwest proposes dividing urban versus rural at the 650 lines per square mile – a convenient metric within the Synthesis Model at which cost characteristics begin to change
- 8 States would get additional funding under Tier 2 (AL, KY, ME, MS, MT, VT, WV, WY)

Conditions for support

- The Commission should condition receipt of any of federal support both on a state's certification that it has achieved reasonably comparable rates within its borders and, over time, the state's transition from implicit subsidies to explicit, competitively neutral funding mechanisms.